

## **REMARKS/ARGUMENTS**

### **Claim Amendments**

Claim 1 has been amended to incorporate the limitation of claim 3. Claim 4 has been amended to reflect the changes to claim 1. These changes thus do not introduce any new matter.

### **35 U.S.C. § 102(b) Rejection**

The rejection of claims 1, 2, and 4-6 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,900,877 to Dubrow, et al. (Dubrow), is respectfully traversed based on the following.

Claim 1 has been amended to incorporate the limitation of former claim 3, that is, claim 1 requires an electrically-conductive open-celled metallic foam material. While the Office Action states that “metallic foam” is not recited in any of the rejected claims, such is clearly not the case. Original claim 3 included the specific limitation that the “electrically-conductive material is an electrically-conductive open-celled metallic foam material.” This limitation is incorporated into claim 1 by this Amendment. For this reason, the rejection is incomplete. In any case, Applicant respectfully asserts that Dubrow does not disclose an open-celled metallic foam material.

A review of Dubrow reveals the disclosure of woven or non-woven fabric, as well as wire bristle structures, column 3, lines 43-48. One of skill in the art would readily appreciate that an open-celled metallic foam material is clearly different from a fabric or bristle structure. Because Dubrow does not disclose any type of open-celled metallic foam material, Dubrow cannot anticipate claim 1, which requires such an open-celled metallic foam material.

The previous Office Action, dated June 16, 2003, states “it is believed that the expanded metal mesh inherently encompasses the open-celled metallic foam material.”

The Office Action however, provides no basis as to why one of skill in the art would consider an expanded metal mesh, or more accurately a “woven or non-woven wire fabric” (Dubrow, column 3, lines 44 and 45) to inherently encompass an open-celled metallic foam material. That a woven or non-woven wire fabric would not inherently encompass an open-celled metallic foam material is due, in no small part, to the drastically different means by which the fabric and foam materials are fabricated. A wire fabric is essentially a two-dimensional material that can subsequently be mechanically pressed to form a three-dimensional structure. A foam can in no sense be considered a two-dimensional material that can be subsequently processed to form a three-dimensional structure. A foam can only go from its original three-dimensional state to a two-dimensional state. Until some showing is made that a woven or non-woven wire fabric does inherently encompass an open-celled metallic foam material, the Applicant respectfully asserts such a claim of inherency cannot stand.

Claims 2 and 4-6 depend, either directly or indirectly, from claim 1. Because Dubrow fails to anticipate claim 1, Dubrow cannot anticipate claims 2 and 4-6 for at least the same reasons.

Accordingly, it is respectfully requested that the rejection of claims 1, 2, and 4-6 under 35 U.S.C. § 102(b) as being anticipated by Dubrow, be reconsidered and withdrawn.

### **35 U.S.C. § 103(a) Rejection**

The rejection of claims 7 and 8 under 35 U.S.C. § 103(a), as being unpatentable over Dubrow, is respectfully traversed based on the following.

Claims 7 and 8 depend indirectly from claim 1. Because Dubrow fails to anticipate claim 1, Dubrow cannot anticipate claims 7 and 8 for at least the same reasons. While Dubrow fails to disclose an open-celled metallic foam material, Dubrow also fails to suggest such an open-celled metallic foam material. Because Dubrow fails to disclose or suggest an open-celled metallic foam material, Dubrow cannot render obvious claim 1,

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which requires an open-celled metallic foam material. Because Dubrow fails to render obvious claim 1, Dubrow cannot render obvious claims 7 and 8 for at least the same reasons.

Accordingly, it is respectfully requested that the rejection of claims 7 and 8 under 35 U.S.C. § 103(a) as being unpatentable over Dubrow, be reconsidered and withdrawn.

### **CONCLUSION**

Wherefore, in view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and an early reconsideration and a Notice of Allowance are earnestly solicited.

Any fee required by this document other than the issue fee, and not submitted herewith should be charged to Sidley Austin Brown & Wood LLP's Deposit Account No. 18-1260. Any refund should be credited to the same account.

If an extension of time is required to enable this document to be timely filed and there is no separate Petition for Extension of Time filed herewith, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed.

Any other fee required for such Petition for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17, other than the issue fee,

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Respectfully submitted,

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